

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2002

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No.17352 OF 2001

AND

WPMP.No. 25633 of 2001 and WVMP.No:2848 of 2001

R.Perachi ..Petitioner

-Vs-

1. Bharat Heavy Electricals Ltd.,
PFP.BPN:Bay-III
rep, by its Senior Dy.General Manager,
(Personnel and Administration)
Kailasapuram, Thiruverumbur,
Trichy-14

2. Senior Manager,
(Personnel and Administration)
Kailasapuram, Thiruverumbur,
Trichy-14 ..Respondents

For petitioner:: Mr.R.Govindaraj

For respondents: Mr.B.T.Seshadri

Writ Petition filed under Article 226 of The Constitution of India
praying for the issue of a writ of certiorarified mandamus, as stated therein.

:O R D E R

The petitioner prays for the issue of a writ of certiorarified
mandamus calling for the records relating to the proceedings made in No.
BP:PM:CE:VRS 2K1:83(1), dated 10.9.2001 passed by the first respondent and
quash the same and direct the second respondent to continue to pay the monthly
salary of the petitioner with all attendant benefits.

2. Heard Mr.R.Govindaraj, learned counsel appearing for the
petitioner and Mr.B.T.Seshadri, learned counsel appearing for the respondents
1 and 2. With the consent of counsel on either side, the writ petition itself
is taken up for final disposal as it was represented that the arguments in the
writ petition as well as in the stay petition are one and the same.

3. According to the petitioner he joined the respondent establishment on 8.2.1978 and earned promotion also. The respondent is a wholly owned Central Government Undertaking and it is amenable to writ jurisdiction of this court as it falls within the scope of "other authority" under Article 12 of The Constitution of India. The respondents introduced "BHEL voluntary Retirement Scheme, 2001" and called for applications from its employees who opt for voluntary retirement. The petitioner submitted an application for Voluntary Retirement on 2.8.2001 to be effect from 24.9.2001 under the said Scheme. However, the petitioner has not submitted Annexures as prescribed in the Scheme. The petitioner submitted his application while in a confused state of mind due to family problems and ill health.

4. Before acceptance of the application by letter dated 22nd of August, 2001, the petitioner revoked his option for voluntary retirement. The petitioner's said revocation has been acknowledged by the first respondent on 29.8.2001. The petitioner submitted another letter of revocation on 29.8.2001 through the second respondent which has also been acknowledged. The petitioner followed it with another letter withdrawing his option on 8.9.2001. However, the first respondent by the impugned proceedings dated 10.9.2001, relieved the petitioner from duty with effect from 24.9.2001 A.N., The petitioner was not furnished with the communication. The petitioner met second respondent and appraised him that he has withdrawn his option letter. On 10.9.2001, the second respondent furnished a copy of the impugned communication, which would show that long after the withdrawal of the application/option letter the respondent accepted the application submitted under VRS Scheme without reference to the withdrawal letters dated 22.8.2001, 29.8.2001 and 8.9.2001. No valid reason has been assigned in this respect to reject the petitioner's request for withdrawal. Hence the present writ petition.

5. According to the petitioner the impugned order passed by the first respondent is illegal, is against the spirit of the voluntary retirement scheme, arbitrary and in violation of principles of natural justice and violative of Art.14 and Art.21 of The Constitution. It is contended that the first respondent having received the withdrawal application ought to have given valid reasons before rejecting the same and passing the impugned order. There is no justification or reason to relieve the petitioner from the post which he has been holding and the action of the respondent is arbitrary. The petitioner further contends that in terms of the pronouncement of the Supreme Court laid down in 1998 (5) SCC 461, 1998 (9) SCC 559 and 2000 (3) Supreme Today 680 the impugned order is liable to be quashed as long prior to the acceptance of the option letter the petitioner had withdrawn the letter and there is nothing on file for the respondent to accept the application. It is contended that the action of the respondent is illegal, arbitrary, violative of Art.14 and Art.21 and it is liable to be quashed.

6. As seen from the counter affidavit filed on behalf of the respondents, the first respondent introduced the Voluntary Retirement Scheme, 2001, with effect from 18th June, 2001 meant to optimise and right size the man power by providing attractive terminal benefits with the eligible employees who retire voluntarily before their respective date of

superannuation. According to Clause 5.5 of the Scheme, those employees who apply for voluntary retirement will be allowed to withdraw the application within 15 days from the date of application. The petitioner who comes under the eligible category of the VRS, by application dated 2.8.2001 opted for voluntary retirement in terms of the scheme. The petitioner has also stated that he wanted to be relieved on 24.9.2001. The petitioner also indicated that withdrawal, if any, is permissible within 15 days from the date of application. Hence the withdrawal, if any, should be made within 15 days from the date of submission of application.

7. On 8.9.2001, the second respondent received a letter of withdrawal from the petitioner and that his application for voluntary retirement scheme be cancelled and he may be permitted to continue in service. Since the application was not submitted within 15 days the withdrawal was not considered and he was relieved with effect from 24.9.2001. The list of persons to be relieved under the Scheme was published on 24.9.2001. The competent authority has also approved the request. The petitioner's name finds place in the said notice. The respondent was not aware of the circumstances under which the VRS application was submitted. However, the petitioner was fully aware that VRS application cannot be withdrawn beyond 15 days of the submission and after 15 days he has no option to withdraw the option.

8. It is contended that no question of the petitioner being given an opportunity before the impugned order as there is no valid withdrawal of the option as per the conditions of the Voluntary Retirement Scheme. It is contended that the only course open to the respondent-management is to accept the application and relieve the petitioner as the withdrawal was not effected within 15 days from the date of submission. It is incorrect to contend that the respondent has no authority to accept the application and pass orders.

The respondent has jurisdiction to accept the application and pass orders. The applications submitted beyond 15 days for withdrawal are not considered and such employees were relieved along with others.

9. The contention that the respondents have no jurisdiction to relieve the petitioner without reference to the withdrawal of the option exercised by the petitioner is unsustainable. It is submitted that withdrawal, if any, could be made only within 15 days and beyond 15 days, the employee has no right to withdraw and the question of withdrawing the application for voluntary retirement does not arise. The decision relied upon by the petitioner has no application to the facts of this case and the respondents pray for the dismissal of the writ petition.

10. The points that arise for consideration are:

(i) Whether the petitioner could withdraw the application for voluntary retirement at any point of time before acceptance?

(ii) What is the effect of withdrawal made beyond 15 days from the date of submission of the application under the Scheme?

(iii) Whether the order accepting the application and relieving the petitioner is legally sustainable or liable to be interfered?

(iv) To what relief, if any?

All the above points could be considered together as they are interconnected and arise out of the same set of facts.

11. At the time of admission this court ordered notice of motion and granted interim stay of the impugned communication which interim order was extended and in force as on date. The respondents moved WVMP No.28248 of 2001 to vacate the order of interim stay. At that stage the writ petition itself is taken up with the consent of counsel on either side.

12. Mr.R.Govindaraj, learned counsel appearing for the petitioner reiterated his contentions and relied upon few of the pronouncements of the Supreme Court. While Mr.B.T.Seshadri, learned counsel appearing for the respondents, attempted to sustain the objections set out in the counter affidavit and in his turn, he also relied upon same pronouncement of the Supreme Court which has since been reviewed. The learned counsel for the respondents contended that the petitioner has no option at all to withdraw his option letter beyond 15 days from the date of submission of the application and the provision of the Scheme is mandatory and hat the respondents cannot be compelled to continue the petitioner in service. Nor, there is any illegality in the respondents relieving the petitioner from service.

13. There is no controversy that the petitioner submitted his application under the Voluntary Retirement Scheme on 2.8.2001. On 22.8.200 1, the petitioner revoked his option and withdrew his option for voluntary retirement well before the date for retirement. The petitioner also followed it with two other reminders on 29.8.2001 and 8.9.2001. Yet, the respondents relieved the petitioner by proceedings dated 10 .9.2001 with effect from 24.9.2001. The fact that the petitioner has submitted three letters revoking his option and withdrawing his option to retire voluntarily is not in dispute.

14. On the admitted facts, the substantial contention advanced being that the respondents cannot act upon the option already revoked and such revocation could be at any time before acceptance of offer and there being no option letter alive it is not open to the respondents to proceed further and pas an order as if there is a valid letter of option. Per contra, the respondents contended that after the lapse of 15 days from the date of exercising the option under the Scheme, there is no question of backing out or withdrawing the option or revoking the option and such withdrawal is impermissible and therefore the order impugned is not liable to be interfered.

15. The order relieving the petitioner is sought to be sustained by placing reliance upon the following portion of the circular,

"Withdrawal of application should be done within 15 days of the date of submission of the application for voluntary retirement and no requests for postponement of the date of relief will be entertained."

16. In the Format prescribed by the respondents also, it is set out thus:-

"3. I am aware that I will be allowed to withdraw the application only within 15 days from the date of my application."

17. However, it is to be pointed out that on the date when option is sought to be accepted and an order of retirement is passe, there is no valid option letter to retire with the respondents. Hence it is contended there is no authority or jurisdiction for the respondents to act upon the option letter already withdrawn and proceed as if there is a valid option available for acceptance. There is force in this contention advanced by the petitioner.

18. Mr.R.Govindaraj, learned counsel for the petitioner relied upon the pronouncement of the Supreme Court in J.N.Srivastava Vs. Union of India and another, reported in 1998 (9) SCC 559 besides other pronouncements and contended that before intended date of retirement and before acceptance, it is always permissible for an employee to withdraw and he has locus poenitentiae to withdraw the proposal for voluntary retirement. The said case relates to a Government servant who is governed by the Fundamental Rules, (F.R and S.R)where the earlier decision in Balram Guptha Vs. Union of India (1987 Supp. SCC 228) has been followed. In my considered view, the said decision has been rendered where the rule is totally different and therefore the said pronouncement will not apply to the facts of the present case.

19. Learned counsel for the petitioner heavily relied upon the pronouncement in Shambhu Murari Sinha Vs. Project & Development India Ltd., and another, reported in 2000 (3) SCC 680 where the Apex Court in respect of VRS introduced by a Government of India Undertaking laid down that offer of voluntary retirement could be withdrawn before the department actually gives effect to its acceptance of offer for voluntary retirement.

20. In Power Finance Corporation Ltd., Vs. Pramod Kumar Bhatia reported in 1997 (4) SCC 280, the Apex Court, it is pointed out held that the resignation, in spite of its acceptance can be withdrawn before the effective date.

21. Per contra, Mr.B.T.Seshadri, learned counsel for the respondents equally relied upon the very pronouncement in Shambhu Murari Sinha Vs. Project Development India and another reported in 2002 (3) SCC 43 7 where the Apex Court in a Review filed by the petitioner therein held that when there is no condition that once the option to voluntary retirement is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw from the voluntary retirement scheme. In that context after analysing the earlier cases in J.N.Srivastava V. Union of India (1998 (9) SCC 559), Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Coop.Ltd., (1998 (5) SCC 46 1), Power Finance Corpn. Ltd., Vs. Promod Kumar Bhatia (197 (4) SCC 2 80), Balram Gupta Vs. Union of India (1987 Supp. SCC 228), Union of India Vs. Gopal Chandra (1978 (2) SCC 301) and Raj Kuamr Vs. Union of India (1968 (3) SCR 857, S.N.PHUKAN,J., speaking for the Bench, while holding that the above cases relating to public servants and the principle laid down therein may not have direct application to the facts of Shambhu Murari Sinha's

case, held thus:-

16. In *Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia* ((1997 (4) SCC 280) this Court went a step further and observed thus: (SCC p.282, para 7)

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

17. It was pointed out in that case that the acceptance of voluntary retirement was not unconditional and before the conditions could be complied with, the employee could withdraw from the Scheme. On those facts, the above observations were made. It is not necessary to consider whether in all cases, actual relief becomes the crucial date. However, the ratio of decision in *Balram Gupta* case ((1998 (9) SC 559) coupled with the observations of the Constitution Bench in *Gopal Chandra Misra* case (1978 (2) SCC 301) could usefully be applied to the present case.

18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had *locus poenitentiae* to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

19. We, therefore, hold that the respondent could not have refused to accept the withdrawal letter of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service."

22. The above pronouncement has been heavily relied upon by Mr.R. Govindaraj in support of his contention that till the jural relationship of the employer and the employee does not come to an end, the petitioner could

always revoke his option and withdraw the same. In the present case also applying the same principle, so long as the jural relationship of employee and employer does not come to an end and the petitioner having sent two letters withdrawing his voluntary retirement well before the actual date of acceptance as well as release from service, the petitioner has the locus poenitentiae to withdraw his proposal for voluntary retirement irrespective of Clause 5.5 of the Scheme enunciated by the respondents. There was no valid option letter available on file with the respondents, when the impugned order came to be passed.

23. However, Mr.B.T.Seshadri, learned counsel for the respondents contended that the very Scheme stipulates that withdrawal, if any, shall be made within 15 days and not beyond that.

24. If we examine the BHEL Voluntary Scheme-2001(Modified) it provides for voluntary retirement of employees who have either crossed 45 years of service or continuously served for a minimum period of 15 years. One of the general condition prescribed being that discretion to accept or reject the request for voluntary retirement rests entirely with the management (See.Clause 5.1). The next clause (Clause 5.4) being "an employee retired under the Scheme will not be eligible for re employment. The scheme is independent of and without prejudice to the right of the company to terminate

the services of an employee or prematurely retire him either under the contract of employment or other rules of the company as applicable to the concerned employee."

25. Clause 5.5. reads thus:-

"Those employees who apply for Voluntary Retirement will be allowed to withdraw the application within 15 days from the date of submission."

26. Clause 5.6 provides where voluntary retirement will not be permitted namely, where disciplinary action is pending or contemplated or investigation/trial for a criminal offence is pending or employees who have filed any case against the company in any court of law. Even here also, a discretion is given to the disciplinary authorities to accept the voluntary retirement if in the opinion of the Disciplinary Authority the allegations against the employee are such that if proved then the proceedings may not end in the imposition of penalty of removal or dismissal from service.

27. The effective date of the Scheme is fixed as 18th June 2001 and it could be withdrawn at the discretion of the Company at any time. The respondents have reserved its right or authority to accept or reject the request for voluntary retirement and discretion entirely rests with the respondent-management though the individual's case falls under Clause 5.6. In other words, even if a person who is entitled to be eligible to apply for voluntary retirement, his application need not necessarily be accepted by the respondent-management and it has the absolute discretion. It is not as if after the expiry of 15 days from the date of submission, the management-employer has no authority except to accept the option.

28. It is rightly pointed out that The scheme formulated by the respondents is not in terms of any bilateral agreement or settlement, but it is a unilateral scheme formulated by the employer. The stipulation in the scheme not being mutual this court is of the considered view that till the jural relationship continues, it is open to the employee to withdraw the option and go back on his option and revoke the application submitted for voluntary retirement as it is equally open to the employer not to accept such option. As has been held by the Apex Court in Shambu Murari Sinha Vs. Project and Development India Ltd., and another, so long as the jural relationship continues and so long as the resignation has not been accepted and petitioner not being relieved, the petitioner is well within his rights to withdraw his option and the respondent cannot rely upon Clause 5.5 of the Scheme and thrust or impose resignation as such a procedure would amount to imposition of compulsory retirement or premature retirement.

29. That apart, it will be against all canons of service jurisprudence. Resignation being voluntary and the resignation having been withdrawn before the snapping of jural relationship, cannot be accepted and imposed by way of compulsory retirement. In other words, on the date when respondent accepts and passes an order, no valid option letter is available before the employer to accept and hence the order is arbitrary and illegal.

30. In the circumstances, while following the pronouncement of the Supreme Court, this court holds that it is well open to the writ petitioner to withdraw the option application even after expiry of 15 days and till it is accepted or till the actual date on which retirements comes into effect. It is rightly contended that the stipulation prescribed by the respondents is illegal and unenforceable as so long as the jural relationship continues, the employee could withdraw his option. The respondents in such contingency cannot thrust or impose a compulsory termination of jural relationship and convert the voluntary retirement into a compulsory retirement, which approach will be arbitrary and violative of Art.14 and Art.21 of The Constitution. All the points are answered against the respondents and in favour of the petitioner.

31. The writ petition is allowed. The impugned order of the respondents are quashed and it is held that the petitioner is in service without any break and with continuity of service and back-wages and all concomitant benefits, privileges and rights as if the petitioner has not chosen to invoke the Voluntary Retirement Scheme at any point of time. Consequently, connected Miscellaneous petitions are closed. No costs.

Internet:Yes

Index:Yes

gkv

23-09-2002

To:-

1. Bharat Heavy Electricals Ltd.,

PFP.BPN:Bay-III
rep, by its Senior Dy.General Manager,
(Personnel and Administration)
Kailasapuram, Thiruverumbur,
Trichy-14

2. Senior Manager,
(Personnel and Administration)
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